IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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|---|---|
| Cosmetic Warriors Limited,<br><br>Plaintiff,<br><br>v.<br><br>Thomas Sabo GmbH & Co. KG<br><br>Defendant. | Civil Act. No. ____________<br><br>Judge ________________________<br><br>Magistrate Judge _____________<br><br>**JURY TRIAL DEMANDED** |

## COMPLAINT

Plaintiff, Cosmetic Warriors Limited, for its Complaint against Defendant Thomas Sabo GmbH & Co. KG alleges as follows based on present knowledge, information, and belief:

## PARTIES

1. Plaintiff Cosmetic Warriors Limited (CWL) is a corporation organized and existing under the laws of the United Kingdom, with its principal place of business at 29 High Street, Poole, Dorset BH15 1AB in the United Kingdom. Plaintiff has extensive operations in the United States, including a flagship retail store at the Mall of America, as well as three other shops within the State of Minnesota and a website at www.lushusa.com.

2. Defendant Thomas Sabo GmbH & Co. KG (Thomas Sabo) is a German corporation with a mailing address of Silberstrasse 1, Lauf a. d. Pegnitz, 91207 Germany. Thomas Sabo sells its products in the United States, and has an ongoing and significant business relationship with a jewelry store named Continental Diamond, 1600 Utica

Avenue South, Suite 130, St. Louis Park, MN 55416. Thomas Sabo describes Continental Diamond as a "Thomas Sabo Official Partner" on the website www.thomassabo.com/US/en_US/shopfinder.

## NATURE OF ACTION AND JURISDICTION

3. This is an action for trademark infringement, unfair competition, and rectification of the register under the Lanham Act, 15 U.S.C. §§ 1051 et seq. and 1119; deceptive trade practices under the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.43 et seq.; unlawful trade practices under the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.09 et seq.; and common law trademark infringement and unfair competition.

4. This Court has jurisdiction over this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and Title 28 of the United States Code, §§ 1331 and 1338, and supplemental jurisdiction over CWL's claims under state law under 28 U.S.C. § 1367(a). This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy in this action exceeds the sum or value of $75,000, exclusive of interest and costs, and is between a citizen of the United Kingdom and a citizen of Germany.

5. This Court has personal jurisdiction over Defendant because *inter alia* Defendant does business in this judicial district and the conduct of Defendant complained of in this Complaint occurred in this judicial district and elsewhere.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

## FACTS

### A. CWL, Its Marks, and Its Products

7. CWL is one of the world's premier suppliers of bath, hair care, fragrance and beauty products made from natural, wholesome ingredients. CWL's products are sold at more than one hundred and fifty retail stores operated in the United States, from its approximately 750 additional retail shops in many foreign countries, as well as via its catalogs and internet sites. CWL has a reputation of providing competitively priced, high-quality bath, hair care, fragrance and beauty products and services; CWL also sells clothing, tote bags and other products. Over the last twenty years, CWL's business in the United States has grown substantially and CWL is one of the nation's best-known retail providers of bath, hair care, fragrance and beauty products and services. CWL is the owner of the LUSH trademark used in conjunction with its over 900 stores worldwide, its catalogs and its websites. CWL also owns numerous other trademarks and service marks.

8. CWL owns the mark KARMA. CWL has made substantial and long use of the mark KARMA itself, or through its licensees or authorized affiliates. Specifically, CWL owns U.S. Trademark Registration No. 3,799,570, for perfumes; bath preparations, namely, bath salts, bubble bath, bath foams, bath oils, shower and bath gel, body scrubs and washes; non-medicated toilet preparations, namely, talcum powder, soaps; cosmetic preparations, namely, skin creams and moisturizers; shampoos, in International Class 3. Said registration was registered on the Principal Register on June 8, 2010, based on first use of the KARMA mark on May 31, 1996. A copy of the particulars of this registration as reflected in the TSDR database maintained by the United States Patent and Trademark Office is attached hereto as Exhibit A.

9. CWL has filed a timely Declaration of Use, and an Affidavit pursuant to section 15 of the Lanham Act, 15 U.S.C. §1065 in the KARMA registration. The Affidavit of Incontestability has been accepted by the United States Patent and Trademark Office, rendering Registration No. 3,799,570 incontestable by operation of law. That registration is now conclusive evidence of the validity of CWL's registered KARMA mark, of the registration of the KARMA mark, CWL's ownership of the KARMA mark and CWL's exclusive right to use the KARMA mark in commerce pursuant to 15 U.S.C. 1115(b).

10. CWL makes and sells a wide range of products under the KARMA name and currently sells KARMA soap, KARMA KOMBA shampoo bars, KARMA solid perfume, KARMA KREAM body lotion, KARMA PERFUME GIFT wrapped gift sets, KARMA liquid perfume, KARMA bubble bars and CWL incorporates these products in an array of gift sets or wrapped gifts. Examples of these products currently on sale are reproduced below.

KARMA

KARMA KOMBA

KARMA

KARMA KREAM

KARMA PERFUME GIFT

KARMA

KARMA

11. CWL has been commercially using the KARMA mark in the United States since at least as early as 1996. The compounds, essential oils, and ingredients that make up the scent known as KARMA are incorporated in numerous products by the facilities that manufacture these products as an essential component used to make a variety of products, all of which will have the aroma of KARMA. KARMA perfume is the signature scent of CWL. CWL's KARMA products are on display and are for sale in each of the LUSH shops every day, are offered on the various web sites and in the LUSH TIMES catalog on a daily and ongoing basis and have been for over twenty years. The KARMA products shown above are not an exhaustive list of all such products CWL has made. CWL makes new additions to the KARMA line from time to time, and retires various products from the KARMA line from time to time. CWL has had a range of KARMA products without interruption and continuously since 1996 and intends to carry the brand forward as a key part of its business.

12. CWL has expended a substantial amount of money and effort advertising and promoting its KARMA mark. CWL is among the most innovative and creative companies selling cosmetics, soaps, hair products, bath products, perfumes, and related products in the world today, and its products are frequently imitated. CWL and its KARMA mark are well known and consumers have come to know, rely upon, and recognize the KARMA mark as identifying numerous of CWL's products. The scent of KARMA perfume permeates CWL's retail stores and is usually perceived by visitors to the shops before they enter the shop. As a result of CWL's substantial promotional, advertising, publicity, and public relations activities, the KARMA mark has acquired substantial goodwill and is an extremely valuable commercial asset.

13. CWL's KARMA mark is distinctive and inherently distinctive, serving to identify and indicate the source of CWL's products to the consuming public, and to distinguish CWL's products and services from those of others.

14. CWL has significant common-law rights in the KARMA mark in Minnesota and throughout the United States.

## B. Thomas Sabo's Unlawful Conduct

15. Defendant Thomas Sabo, with constructive and, upon information and belief, actual knowledge of CWL's KARMA mark, adopted the mark KARMA, as part of trademarks including the word KARMA together with other words, and has sought to register those marks, or has already registered those marks with the United States Patent and Trademark Office as follows.

| Word Mark | Serial No. Reg. No. | Goods/Services |
|---|---|---|
| THOMAS SABO KARMA BEADS | 79/163,263 5,070,489 | **Class 3:** Essential oils and aromatic extracts; perfumery and fragrances; cosmetics; cologne impregnated disposable wipes; scented body spray; perfumed tissues; perfumed powder; scented toilet water; non-medicated bath preparations; non-medicated hair treatment preparations; soaps for personal use and gels for cosmetic purposes; non-medicated hand washes<br>**Class 14:** Gemstones, pearls and precious metals, and imitations thereof; jewellery; jewelry dishes; charms of precious metals; bracelets; bracelets of precious metal; jewellery with cultured pearls; ear clips, scarf clips and tie clips of silver; decorative pins; decorative brooches; decorative key rings and rings trinkets; jewellery for personal use; necklaces; jewellery made from silver; chains of precious metals; cuff links and tie clips; medallions made of precious metals; earrings of precious metal; ear ornaments in the nature of jewellery; pearls, rings, jewellery made of precious metal; key chains as jewellery, trinkets or fobs; closures for necklaces; clasps for jewelry; presentation boxes for horological articles; presentation boxes for watches; caskets for clocks and jewels; jewellery cases; jewelry cases not of precious metal; time instruments; pendants for watch chains; watches made of precious metals or coated therewith; clocks and watches; watchstraps; metal expanding watch bracelets; chronographs as watches; cases for watches and clocks; non-leather watch straps; boxes for timepieces; timepieces; clocks incorporating ceramics; chronometric apparatus and instruments; movements for clocks and watches; dials for clock- and watchmaking |

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|---|---|---|
| | | **Class 35:** Advertising, marketing and promotional services; electronic commerce services, namely, providing information about products via telecommunication networks for advertising and sales purposes; promotion services; computerized business promotion in the nature of publicity, advertising, marketing, promotions and public relations for wholesalers, retailers and consumers; advice in the field of business management and marketing; corporate identity services; provision of information relating to advertising; provision of information relating to marketing; dissemination of publicity leaflets; publication of publicity materials; business promotion services provided by audio/visual means in the nature of publicity, advertising, marketing, promotions and public relations for wholesalers, retailers and consumers; producing and distributing audio-visual presentations for use in advertising; bill sticking; public relations services; product demonstrations and product display services; organizing, promoting and conducting trade and exhibition shows; updating of advertising information on a computer data base; advertising, marketing and promotional consultancy, advisory and assistance services; distribution of advertising, marketing and promotional material |
| THOMAS SABO KARMA BEADS | 79/148,965<br>4,766,359 | **Class 3:** Aroma for perfumes, namely, perfumed extracts for perfumes, plant and herb extracts sold as components of perfumes, aromatic essential oils for perfumes; floral extracts in the nature of perfumery, namely, perfumed extracts for perfumes, plant and herb extracts sold as components of perfumes; perfume; perfume oil, perfumed creams; toilet preparations, namely, perfumed body lotions; scented body sprays; toilet preparations in the nature of scented lotions, namely, scented body lotions, scented bath lotion, scented massage lotion; perfumed soaps; scented eau de toilettes; scented tissues, namely, tissues impregnated with perfumed cosmetic lotions, tissues impregnated with a perfumed skin cleanser, pre-moistened cosmetic tissues containing perfume<br>**Class 14:** Jewelry, namely, pendants made of rare metals; jewelry, namely, bracelets; jewelry made of cultured pearls; enameled jewelry; cases for jewelry; jewelry, watches, wrist-watches and pocket watches; jewelry goods, namely, jewelry, bijouterie; jewelry and bijouterie rings, jewelry and bijouterie chains, gold jewelry, necklace chains, silver jewelry, jewelry with pearls, platinum jewelry, jewelry and bijouterie with brilliants and with colored stones, wedding rings, jewelry and bijouterie for gentlemen, precious stones; jewelry; jewelry, namely, necklaces; rings being jewelry made of precious metals; jewelry in the nature of synthetic stones namely, synthetic precious stones; synthetic precious stones<br>**Class 16:** Hinged cardboard boxes; printed paper packing materials, namely, packaging containers of paper, paper bags for packaging, packing paper, paper for wrapping and packaging; paper containers for packaging purposes; plastic pouches for packaging purposes; paper pouches for packaging purposes; cardboard boxes for packaging purposes; loops for package decoration, namely, paper bows for gift wrap, decorative paper bows for wrapping; bags, pouches and goods for packaging, packing and storage purposes made of paper, cardboard or plastic, namely, paper pouches for packaging, plastic or paper bags |

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| | | for merchandise packaging, plastic or paper pouches for merchandise packaging, boxes, cartons, storage containers, and packaging containers made of paper or cardboard; paper packaging boxes; packaging boxes of cardboard; packaging bags of plastic; packaging sacs of paper |
| EAU DE KARMA | 79/189,376 | **Class 3:** Essential oils and aromatic extracts; perfumery and fragrances; cosmetics; disposable wipes impregnated with scented water; scented body sprays; perfumed tissues; perfumed powder; perfumed toilet waters; bath preparations; hair care preparations; soaps and gels; hand washes<br>**Class 4:** Perfumed candles, wicks for candles, candles (for lighting); candles for Christmas trees<br>**Class 35:** Advertising, marketing and promotional services; electronic commerce services, namely, providing information about products via telecommunication networks for advertising and sales purposes; promotion services; computerised business promotion; consultancy in the field of business management and marketing; corporate identity services; provision of information relating to advertising; provision of information relating to marketing; issuing of publicity leaflets; preparation of publicity documents; business promotion services provided by audio/visual means; preparing audio/visual presentations for advertising purposes; bill sticking; public relations services; product demonstrations and product display services; trade show and exhibition services; updating of advertising information on a computer data base; advisory and assistance services in the field of advertising, marketing and promotional services; distribution of advertising, marketing and promotional material |
| KARMA BEADS | 79/163,264<br>5,070,490 | **Class 3:** Essential oils and aromatic extracts; body cleaning and beauty care preparations; non-medicated bath preparations; deodorants and antiperspirants; non-medicated hair treatment preparations for cosmetic purposes; soaps for personal use and gels for cosmetic purposes; non-medicated hand washes; foams for use in the shower; perfumery and fragrances; scented body spray; perfumed tissues; perfumed powder; scented toilet water; cologne impregnated disposable wipes<br>**Class 14:** Gemstones, pearls and precious metals, and imitations thereof; jewellery; jewelry dishes; charms of precious metals; bracelets; bracelets of precious metal; jewellery with cultured pearls; ear clips, scarf clips and tie clips of silver; decorative pins; decorative brooches; decorative key rings and rings trinkets; jewellery for personal use; necklaces; jewellery made from silver; chains of precious metals; cuff links and tie clips; medallions made of precious metals; earrings of precious metal; ear ornaments in the nature of jewellery; pearls, rings, jewellery made of precious metal; key chains as jewellery, trinkets or fobs; closures for necklaces; clasps for jewelry; presentation boxes for horological articles; presentation boxes for watches; caskets for clocks and jewels; jewellery cases; jewelry cases not of precious metal; time instruments; pendants for watch chains; watches made of precious metals or coated therewith; clocks and watches; watchstraps; metal expanding watch bracelets; chronographs as watches; cases for watches and clocks; non-leather watch straps; |

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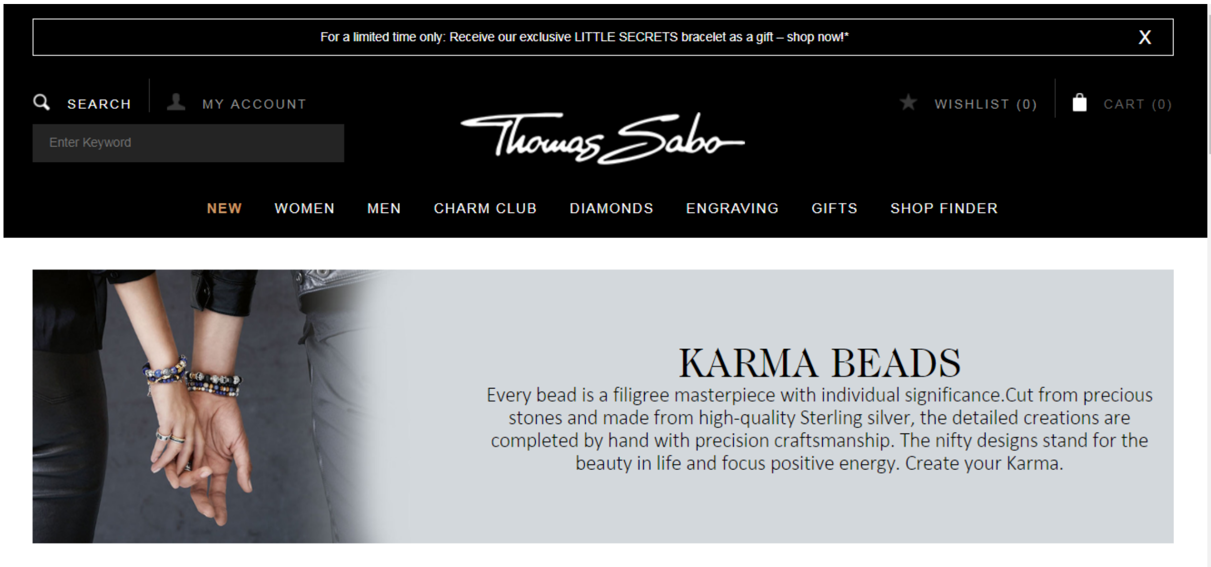
|---|---|---|
| | | boxes for timepieces; timepieces; clocks incorporating ceramics; chronometric apparatus and instruments; movements for clocks and watches; dials for clock- and watchmaking<br>**Class 35:** Advertising, marketing and promotional services; advertising, marketing and promotional consultancy, advisory and assistance services; loyalty, incentive and bonus program services; organizing, promoting and conducting trade and exhibition shows; product demonstrations and product display services; distribution of advertising, marketing and promotional material; public relations services; updating of advertising information on a computer data base; updating of advertising material; bill sticking; producing and distributing audio-visual presentations for use in advertising; business promotion services provided by audio/visual means in the nature of publicity, advertising, marketing, promotions and public relations for wholesalers, retailers and consumers; publication of publicity materials; dissemination of publicity leaflets; provision of information relating to advertising; provision of information relating to marketing; provision of information relating to advertising |

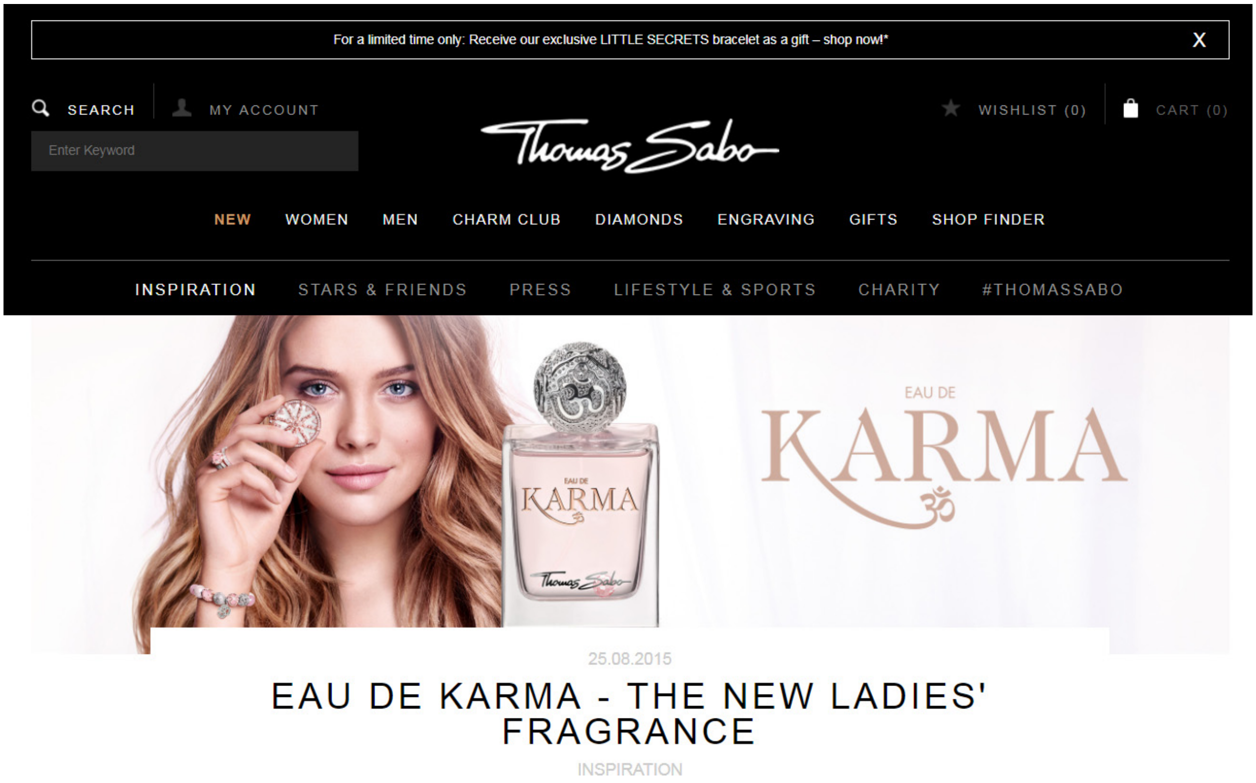
Copies of printouts from the TSDR database maintained by the United States Patent and Trademark Office for each of these applications or registrations showing the particulars thereof are attached hereto as Exhibits B, C, D and E respectively.

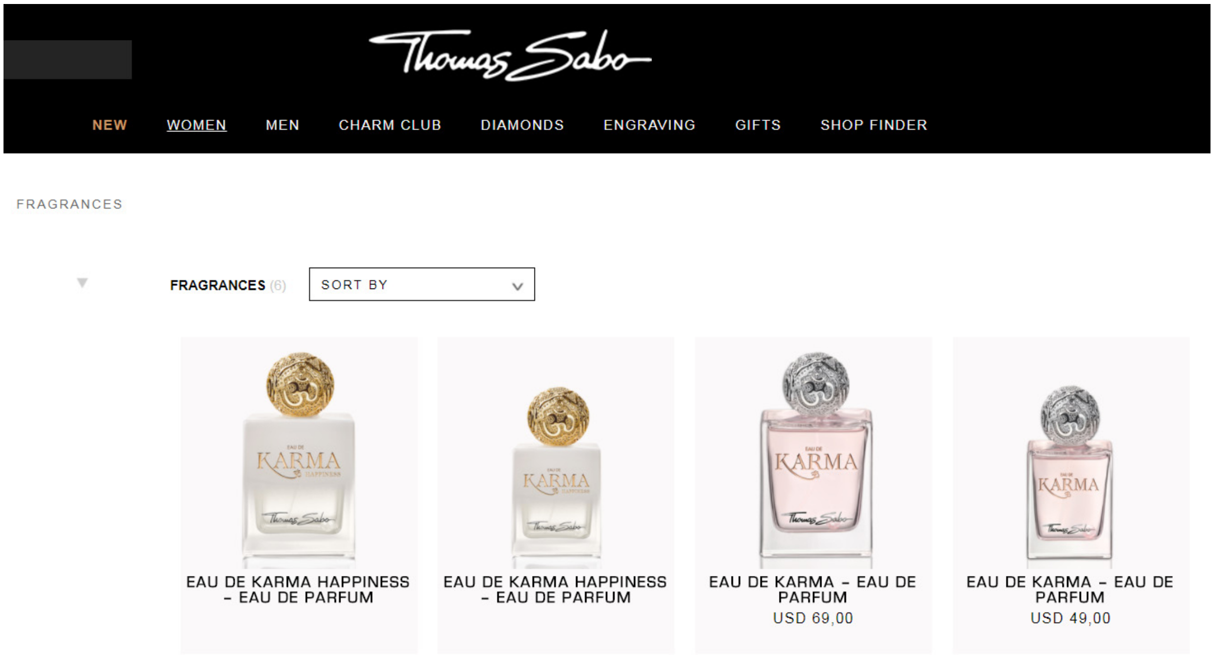
16. On information and belief, Thomas Sabo has begun using the marks KARMA, KARMA BEADS, THOMAS SABO KARMA BEADS, and EAU DE KARMA for at least some of the goods and services listed in the Thomas Sabo application and registrations shown in Exhibits B, C, D, and E.

Examples found on Thomas Sabo's website www.thomassabo.com are shown below:

(The balance of this page is blank.)


For a limited time only: Receive our exclusive LITTLE SECRETS bracelet as a gift – shop now!*
X
SEARCH
MY ACCOUNT
Enter Keyword
Thomas Sabo
WISHLIST (0)
CART (0)
NEW
WOMEN
MEN
CHARM CLUB
DIAMONDS
ENGRAVING
GIFTS
SHOP FINDER
KARMA BEADS
Every bead is a filigree masterpiece with individual significance.Cut from precious stones and made from high-quality Sterling silver, the detailed creations are completed by hand with precision craftsmanship. The nifty designs stand for the beauty in life and focus positive energy. Create your Karma.


For a limited time only: Receive our exclusive LITTLE SECRETS bracelet as a gift – shop now!*
X
SEARCH
MY ACCOUNT
Enter Keyword
Thomas Sabo
WISHLIST (0)
CART (0)
NEW
WOMEN
MEN
CHARM CLUB
DIAMONDS
ENGRAVING
GIFTS
SHOP FINDER
INSPIRATION
STARS & FRIENDS
PRESS
LIFESTYLE & SPORTS
CHARITY
#THOMASSABO
KARMA
EAU DE
KARMA
25.08.2015
EAU DE KARMA - THE NEW LADIES' FRAGRANCE
INSPIRATION


Thomas Sabo
NEW
WOMEN
MEN
CHARM CLUB
DIAMONDS
ENGRAVING
GIFTS
SHOP FINDER
FRAGRANCES
FRAGRANCES (6)
SORT BY
EAU DE KARMA HAPPINESS – EAU DE PARFUM
EAU DE KARMA HAPPINESS – EAU DE PARFUM
EAU DE KARMA – EAU DE PARFUM
USD 69,00
EAU DE KARMA – EAU DE PARFUM
USD 49,00

17. Defendant is aware of the vast and valuable goodwill and reputation represented and symbolized by CWL's KARMA mark. Defendant is aware that CWL's consumers and potential consumers rely upon CWL's KARMA mark as distinguishing CWL's products and services from the products and services of others.

18. Thomas Sabo's use of the marks KARMA, KARMA BEADS, THOMAS SABO KARMA BEADS, and EAU DE KARMA is without attribution and without the permission, consent, or authority of CWL, and is likely to cause confusion, mistake, or deception with CWL's KARMA mark and KARMA products.

19. Defendant, with constructive and, upon information and belief, actual knowledge of CWL's proprietary rights in the mark KARMA, began advertising, promoting, offering for sale, and selling products that are closely related to those long sold by CWL under its KARMA mark, and Thomas Sabo has continued to do so despite the protestations of CWL.

20. Thomas Sabo's use of CWL's proprietary KARMA mark is likely to cause

confusion, mistake, or deception.

**C. Effect of Thomas Sabo's Conduct on CWL and the Consuming Public**

21. Thomas Sabo has infringed upon the rights of CWL by offering for sale, selling, advertising and distributing goods under confusingly similar, deceptively similar and unfairly similar names and trademarks to CWL's KARMA trademark.

22. Thomas Sabo's use of the KARMA mark, alone or combined with the name THOMAS SABO, the word BEADS or as EAU DE KARMA to promote, advertise, sell, and offer for sale competing or similar types of goods as those offered by CWL in connection with its KARMA mark, violates the rights of CWL and risks confusion or deception of the consuming public as to the source of Thomas Sabo's goods, and/or as to the affiliation with, sponsorship of or approval of Thomas Sabo's goods by CWL.

23. Thomas Sabo's goods are offered and/or promoted in the same or very similar channels of trade as the products and services offered by CWL in connection with its KARMA mark. Both parties sell their goods in high-end shopping districts, major or regional malls, and over the Internet to consumers in Minnesota and across the United States.

24. Thomas Sabo's "Official Partner" for retail sales in Minnesota, Continental Diamond, is located in St. Louis Park, Minnesota, a mere 5 miles along Interstate Highway 394 from CWL's shop located in the Ridgedale Mall, in Minnetonka, Minnesota. Virtually all customers who visit the Continental Diamond location are familiar with and have likely visited the Ridgedale Mall, or have visited the Mall of America in Bloomington, Minnesota where CWL has a flagship store. All of CWL's

stores promote and sell KARMA products, including those in Edina, Roseville, Bloomington and Minnetonka, Minnesota. Customers at Thomas Sabo's "Official Partner" location in Minnesota are highly likely to be familiar with CWL, CWL's KARMA mark, and CWL's KARMA products.

25. As a result of Thomas Sabo's unauthorized use of the KARMA mark on goods classified in International Classes 3 and 4 according to the Trademark Identification Manual of the United States Patent and Trademark Office, Defendant is being unjustly enriched at CWL's expense, and CWL is being damaged.

26. CWL objects to the use and registration of KARMA marks for those goods of Sabo falling in International Classes 3 and 4 listed in the Sabo trademark applications listed above in paragraph 12 above. The "Sabo challenged goods" herein. CWL does not challenge use or registration of the Sabo marks for the goods or services listed above in International Classes 14, 16 or 35.

27. Thomas Sabo's unauthorized use and/or registration of KARMA marks for goods in International Classes 3 and 4 has significantly injured CWL's interests. Specifically, Defendant (a) has traded upon and threatens to further trade upon the significant and valuable goodwill in CWL's KARMA mark; (b) is likely to cause public confusion as to the source, sponsorship or affiliation of Thomas Sabo's products or services; (c) has damaged and threatens to further damage CWL's significant and valuable goodwill in CWL's KARMA mark; (d) has injured and threatens to further injure CWL's right to use CWL's KARMA mark as the exclusive indicia of origin of CWL's KARMA products in Minnesota and throughout the United States; and (e) has lessened the capacity of CWL's KARMA mark, to indicate that only CWL's products are

sponsored by CWL.

28. Unless these infringing acts by Defendant are restrained by this Court, they will cause irreparable injury to CWL and to the public, for which there is no adequate remedy at law.

## D. Prior Filed and Now Pending Proceedings in The Trademark Trial and Appeal Board within The United States Patent and Trademark Office

29. CWL has objected to the registration of the Thomas Sabo KARMA marks identified in Exhibits B, C, D and E in the United States Patent and Trademark Office with respect to goods in International Classes 3 and 4. CWL has opposed the application to register the EAU DE KARMA mark, and has filed timely Petitions to Cancel the THOMAS SABO KARMA BEADS and KARMA BEADS registrations with respect to International Classes 3 and 4. The opposition proceeding and cancellation proceedings are identified below:

| Filing Date | Defendant and Marks |
|---|---|
| 91234323<br>05/01/2017 | Thomas Sabo GmbH & Co. KG<br>**Mark:** EAU DE KARMA **S#:** 79189376<br>**Challenged:** International Classes 3 and 4 |
| 92065538<br>03/03/2017 | Thomas Sabo GmbH & Co. KG<br>**Mark:** THOMAS SABO KARMA BEADS **S#:** 79148965 **R#:** 4766359<br>**Challenged:** International Class 3 |
| 92065564<br>03/03/2017 | Thomas Sabo GmbH & Co. KG<br>**Mark:** THOMAS SABO KARMA BEADS **S#:** 79163263 **R#:** 5070489<br>**Challenged:** International Class 3 |
| 92065565<br>03/03/2017 | Thomas Sabo GmbH & Co. KG<br>**Mark:** KARMA BEADS **S#:** 79163264 **R#:** 5070490<br>**Challenged:** International Class 3 |

Each of these proceedings in now pending with respect to the International Classes challenged.

30. Pursuant to Section 37 of the Lanham Act, 15 U.S.C. § 1119, this Court may determine the right to registration, or order the cancellation of a registration, in

whole or in part. This Court may also rectify the trademark register with respect to Thomas Sabo's application to register EAU DE KARMA, and the registrations of the THOMAS SABO KARMA BEADS and KARMA BEADS marks. The Court should act in this matter in order to prevent the use or registration of marks confusingly similar to, or otherwise causing damage to CWL's KARMA trademark registration and/or common law rights in the mark KARMA.

**E. Willful Nature of Thomas Sabo's Conduct**

31. Thomas Sabo's acts complained of herein have been deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of CWL's rights. In view of the egregious nature of Thomas Sabo's actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

## COUNT I: FEDERAL TRADEMARK INFRINGEMENT

32. CWL repeats the allegations of paragraphs 1-31 of this Complaint as if fully set forth herein.

33. The acts of the Thomas Sabo complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute federal trademark infringement in violation of 15 U.S.C. § 1114(1).

34. By reason of Thomas Sabo's bad faith and willful infringement, CWL is entitled to recover actual damages, treble damages, an accounting for Thomas Sabo's profits, attorneys' fees, and the costs of this litigation pursuant to 15 U.S.C. § 1117 and injunctive relief pursuant to 15 U.S.C. § 1116.

## COUNT II: FEDERAL UNFAIR COMPETITION

35. CWL repeats the allegations of paragraphs 1-34 of this Complaint as if

fully set forth herein.

36. The acts of the Thomas Sabo complained of herein constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). CWL is entitled to recover actual and treble damages, attorneys' fees, and the costs of this litigation pursuant to 15 U.S.C. § 1117 and injunctive relief pursuant to 15 U.S.C. § 1116.

## COUNT III: COMMON LAW UNFAIR COMPETITION

37. CWL repeats the allegations of paragraphs 1-36 of this Complaint as if fully set forth herein.

38. By engaging in the foregoing acts, Thomas Sabo has knowingly engaged in unlawful passing off and competed unfairly with CWL in violation of the common law of unfair competition in the State of Minnesota.

39. CWL is entitled to recover actual and punitive damages for Thomas Sabo's unfair competition.

## COUNT IV: COMMON LAW TRADEMARK INFRINGEMENT

40. CWL repeats the allegations of paragraphs 1-39 of this Complaint as if fully set forth herein.

41. The acts of the Thomas Sabo complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute trademark infringement under the common law.

42. Thomas Sabo's acts were taken in willful, deliberate, and/or intentional disregard of CWL's rights.

43. CWL has suffered irreparable harm, for which it has no adequate remedy at law, and will continue to suffer irreparable injury unless and until Thomas Sabo's

infringing acts are enjoined by this Court.

**COUNT V: DECEPTIVE TRADE PRACTICES**

**M.S.A. §§ 325D.44 et. seq.**

44. CWL repeats the allegations of paragraphs 1-43 of this Complaint as if fully set forth herein.

45. The acts of the Thomas Sabo complained of herein constitute deceptive trade practice in violation of the Deceptive Trade Practices Act of the State of Minnesota, M.S.A. §§ 325D.44 et seq.

46. As a direct and proximate result of Thomas Sabo's deceptive trade practices, CWL has suffered and will continue to suffer irreparable harm if the conduct of Thomas Sabo is not enjoined.

47. Pursuant to Minn. Stat. § 325D.45, CWL is entitled to recover its costs and attorneys' fees.

**COUNT VI: UNLAWFUL TRADE PRACTICES**

**M.S.A. § 325D.09 et seq.**

48. CWL repeats the allegations of paragraphs 1-47 of this Complaint as if fully set forth herein.

49. The acts of the Thomas Sabo complained of herein mislead consumers as to the quality, ingredients and origin of merchandise purchased, and constitute unlawful trade practices in violation of Minn. Stat. § 325D.09 et seq.

50. As a direct and proximate result of Thomas Sabo's unlawful trade practices, CWL has suffered and will continue to suffer irreparable harm if the conduct of Thomas Sabo is not enjoined.

51. The public is being harmed by Thomas Sabo's use of the KARMA mark; stopping Thomas Sabo's actions will benefit the public in general and will benefit individual consumers.

52. Pursuant to Minn. Stat. § 325D.15 and § 8.31, subd. 3a, CWL is entitled to injunctive relief, and to recover its costs, disbursements, and reasonable attorneys' fees.

**COUNT VII: RECTIFICATION OF THE TRADEMARK REGISTER**

**Lanham Act, 15 U.S.C. § 1119**

53. CWL repeats the allegations of paragraphs 1-52 of this Complaint as if fully set forth herein.

54. CWL has been and is being damaged by the existence of U.S. Trademark Registration Nos. 4,766,359; 5,070,489 and 5,070,490 for the mark KARMA BEADS and THOMAS SABO KARMA BEADS, and trademark application Serial No. 79/189,376 for the mark EAU DE KARMA.

55. CWL is entitled to have these registrations cancelled in part with respect to International Class 3, and to have the court order that the trademark application not mature to registration with respect to International Classes 3 and 4 to prevent further damage and injury to CWL.

**PRAYER FOR RELIEF**

WHEREFORE, CWL prays that:

(a) Thomas Sabo, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, be permanently enjoined from using, selling or offering for sale any product or service under a mark confusingly similar to CWL's KARMA trademark and from using any of the marks KARMA BEADS, EAU DE KARMA or THOMAS SABO KARMA BEADS for any good classified in International Classes 3 or 4, including but not limited to Class 3: Essential oils and aromatic extracts; perfumery and fragrances; cosmetics; cologne impregnated disposable wipes; scented body spray; perfumed tissues; perfumed powder; scented toilet water; non-medicated bath preparations; non-medicated hair treatment preparations; soaps for personal use and gels for cosmetic purposes; non-medicated hand washes, Aroma for perfumes, namely, perfumed extracts for perfumes, plant and herb extracts sold as components of perfumes, aromatic essential oils for perfumes; floral extracts in the nature of perfumery, namely, perfumed extracts for perfumes, plant and herb extracts sold as components of perfumes; perfume; perfume oil, perfumed creams; toilet preparations, namely, perfumed body lotions; scented body sprays; toilet preparations in the nature of scented lotions, namely, scented body lotions, scented bath lotion, scented massage lotion; perfumed soaps; scented eau de toilettes; scented tissues, namely, tissues impregnated with perfumed cosmetic lotions, tissues impregnated with a perfumed skin cleanser, pre-moistened cosmetic tissues containing perfume and; Class 4: Perfumed candles, wicks for candles, candles (for lighting); candles for Christmas trees, or similar goods;

(b) Thomas Sabo its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, be required to modify all packaging and promotional material to eliminate references to any mark confusingly similar to the KARMA mark the goods listed above in subparagraph (a) above, and all other goods classified in International Classes 3 or 4;

(c) Thomas Sabo, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, be required to deliver to the Court for destruction, or show proof of destruction of, any and all enjoined labels, signs, prints, products, packages, wrappers, receptacles, and advertisements, and any other materials in Thomas Sabo's possession or control that reference any mark confusingly similar to the KARMA mark;

(d) Thomas Sabo be ordered to file with this Court and to serve upon CWL within 30 days after the entry and service on Thomas Sabo of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant have complied with the injunction;

(e) CWL recover all damages it sustains as a result of Thomas Sabo's infringement, unfair competition, and deceptive and unlawful trade practices and that said damages be trebled;

(f) An accounting be directed to determine Thomas Sabo's profits resulting from Thomas Sabo's activities complained of herein, and that such profits be paid over to CWL, increased as the Court finds to be just under the circumstances of this case;

(g) Thomas Sabo and all others acting in concert with them be directed to pay punitive and/or enhanced damages to deter Thomas Sabo and all others similarly situated from like unlawful conduct in the future;

(h) The court rectify the trademark register to cancel the three registrations Thomas Sabo has obtained that contain the word KARMA, namely Registration Nos. 4,766,359; 5,070,489 and 5,070490 with respect to International Class 3, and order that trademark application Serial No. 79/189,376 not mature to registration with respect to International Classes 3 and 4.

(h) CWL recover its reasonable attorneys' fees;

(i) CWL recover its costs of this action and pre-judgment and post-judgment interest; and

(j) CWL recover such other and further relief as the Court may deem just and appropriate.

**JURY DEMAND**

Under Fed. R. Civ. P. 38(b), CWL hereby demands a trial by jury on all issues triable as of right by a jury.

Respectfully submitted,

COSMETIC WARRIORS LIMITED

by its attorneys,

Dated: __September 20, 2017_____

_s/John A. Clifford_____________________

John A. Clifford, Atty. No. 134,181
Heather Kliebenstein, Atty. No. 337,419
Paige S. Stradley, Atty. No. 393,432
MERCHANT & GOULD P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2215
Telephone: 612.332.5300
Facsimile: 612.332.9081
jclifford@merchantgould.com
hkliebenstein@merchantgould.com
pstradley@merchantgould.com